

House Engrossed

subsurface minerals; access; federal policy

State of Arizona
House of Representatives
Fifty-seventh Legislature
Second Regular Session
2026

HOUSE CONCURRENT MEMORIAL 2009

A CONCURRENT MEMORIAL

URGING THE PRESIDENT OF THE UNITED STATES, THE UNITED STATES CONGRESS, THE DEPARTMENT OF THE INTERIOR AND THE BUREAU OF LAND MANAGEMENT TO STREAMLINE ACCESS TO MINERALS ON FEDERAL LAND WITHDRAWALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 To the President, the Congress, the Secretary of the Interior and the
2 Director of the Bureau of Land Management of the United States of
3 America:

4 Your memorialist respectfully represents:

5 Whereas, copper is one of the 5 C's of Arizona, as Arizona has some
6 of the largest copper reserves in the nation; and

7 Whereas, the United States Geological Survey and the United States
8 Department of the Interior have added copper to the 2025 List of Critical
9 Minerals; and

10 Whereas, federal actions such as the Antiquities Act of 1906, the
11 Federal Land Policy Management Act of 1976 and the National Environmental
12 Policy Act of 1970 have increased the challenges of accessing the
13 subsurface minerals and engaging in critical mineral exploration in the
14 West; and

15 Whereas, there are known and proven reserves of copper and other
16 critical minerals under the surface of several federal land withdrawals in
17 Arizona; and

18 Whereas, because of their location on federal land withdrawals,
19 these minerals are unavailable for our nation's growing economy; and

20 Whereas, the recent Baaj Nwaavjo I'tah Kukveni-Ancestral Footprints
21 of the Grand Canyon National Monument, the Ironwood Forest National
22 Monument and the Petrified Forest National Park have known resources like
23 copper, uranium and potash that are now off limits to development; and

24 Whereas, the State Land Department owns parcels of land that feature
25 subsurface mineral rights on various federal land withdrawals in this
26 state, but because the land is withdrawn from use, the access to
27 subsurface minerals is off limits to the State Land Department and its
28 beneficiaries; and

29 Whereas, the federal government reserved minerals beneath private
30 lands patented under the Stock-Raising Homestead Act and retained
31 ownership of the surface above private minerals claimed under the General
32 Mining Act of 1872; and

33 Whereas, land swaps between the federal government and the State
34 Land Department that did not transfer the entire parcel have resulted in
35 split estates; and

36 Whereas, the mixture of federal, state and private land ownership in
37 the West occurs not only with the surface estate but also with the
38 subsurface estate, resulting in a checkerboard pattern of split estate
39 parcel ownership that complicates access to and exploration of critical
40 minerals; and

41 Whereas, the most difficult challenge for individuals who want to
42 engage in mineral exploration is the federal review for compliance with
43 the National Environmental Policy Act (NEPA), which is further complicated
44 by the mixed surface and subsurface estate ownership between the federal
45 government, state government and private owners; and

1 Whereas, the process for gaining access to the land for mineral
2 exploration and extraction is unnecessarily complicated, as all that is
3 needed is minor and temporary access to the surface of the estate; and

4 Whereas, previous administrations have recognized the certain
5 categorical exclusions to compliance with NEPA for these temporary and
6 minor access scenarios, but in 2021 the Council on Environmental Quality,
7 under the Biden administration, changed this policy by issuing a
8 memorandum on NEPA implementation that required stricter enforcement of
9 NEPA provisions and scrutiny of prior categorical exclusions; and

10 Whereas, the provisions of 43 Code of Federal Regulations part 3800,
11 subpart 3809 that characterize patented nonmineral surface estates,
12 including surface estates originally patented under the Stock-Raising
13 Homestead Act and Taylor Grazing Act, as public lands under the Federal
14 Land Policy and Management Act, are contrary to law and should be
15 rescinded; and

16 Whereas, the language of the 1993 amendments to the Stock-Raising
17 Homestead Act, including 43 United States Code section 299(e), (f), (h),
18 (k) and (l), shows that Congress intended the United States Department of
19 the Interior's regulatory involvement during development of federally
20 reserved minerals underlying Stock-Raising Homestead Act-patented surface
21 estates to be limited to safeguarding the property interests of the
22 surface owners rather than the broader suite of surface resource
23 functions; and

24 Whereas, in 2025, the Trump administration took action to repeal any
25 Biden-era NEPA implementation documents that had burdensome effects on
26 mineral exploration and access; and

27 Whereas, in 2026 and beyond, the Trump administration should
28 continue taking action to repeal and rescind policies and rule that hinder
29 private access to surface and subsurface estates for mineral exploration
30 and development.

31 Wherefore, your memorialist, the House of Representatives of the State of

32 Arizona, the Senate concurring, prays:

33 1. That the Congress of the United States:

34 (a) Work to amend the Antiquities Act of 1906 and extend the
35 Wyoming exception to Arizona so that no new national monuments can be
36 designated in this state without the express authorization of the United
37 States Congress, the Legislature of the State of Arizona and necessary
38 local governments.

39 (b) Quantify the amount of state trust subsurface mineral rights
40 that are located under federal land withdrawals and compensate states for
41 the value of those subsurface minerals that state land departments are
42 prohibited from accessing due to land withdrawals.

43 2. That the President of the United States take all necessary
44 policy steps to streamline the permitting process for new mines in the

1 West to increase the ease, speed and ability of private parties to gain
2 access to federal land for critical mineral exploration.

3 3. That the Secretary of the Interior and the Director of the
4 Bureau of Land Management work with state legislatures, state land
5 departments, the private industry and private land owners to develop a
6 comprehensive plan to engage in a series of strategic land swaps and
7 subsurface mineral swaps to eliminate the checkerboard patterns of both
8 the surface and subsurface estates and eliminate the split estate in as
9 many places as possible.

10 4. That the Secretary of the Interior direct the Bureau of Land
11 Management to perform a rulemaking that rescinds paragraphs (d) and (e) of
12 43 Code of Federal Regulations section 3809.31 and section 3809.2(a) and
13 rescinds the clause "including Stock-Raising Homestead lands as provided
14 in section 3809.31(d) and (e)" because:

15 (a) Those rules are contrary to the definition of public lands in
16 section 103(a) of the Federal Land Policy Management Act of 1976, contrary
17 to the language of the 1993 amendments of the Stock-Raising Homestead Act
18 and contrary to the legislative history of the 1993 amendments during
19 which Congress explicitly considered and ultimately rejected the
20 application of 43 Code of Federal Regulations part 3800, subpart 3809 to
21 surface estates patented under that act.

22 (b) There is no statutory authority for the application of 43 Code
23 of Federal Regulations part 3800, subpart 3809 to surface estates patented
24 under the Taylor Grazing Act.

25 5. That the Secretary of State of the State of Arizona transmit
26 copies of this Memorial to the President of the United States, the
27 President of the United States Senate, the Speaker of the United States
28 House of Representatives, the United States Secretary of the Interior, the
29 Director of the United States Bureau of Land Management and each Member of
30 Congress from the State of Arizona.